

1 THE HONORABLE JAMAL N. WHITEHEAD
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10 UNITED STATES DISTRICT COURT
11 FOR THE WESTERN DISTRICT OF WASHINGTON
12 AT SEATTLE
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15 IN RE: AMAZON RETURN POLICY
16 LITIGATION
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CASE NO.: 2:23-CV-01372-JNW

JOINT STATUS REPORT AND
DISCOVERY PLAN

1 Pursuant to LCR 26, the parties submit this Joint Status Report and Discovery Plan.

2 **1. Statement of the nature and complexity of the case**

3 **a. Plaintiffs' statement:**

4 Plaintiffs are all customers of Amazon who filed this case as a class action on behalf of
5 themselves and two nationwide classes of customers. Despite Amazon's attempt to characterize
6 this case as simple contract dispute, Dkt. 62 at 1, Plaintiffs allege that Amazon has engaged in
7 unfair, deceptive, and unlawful business practices by falsely representing to customers that they
8 can receive refunds for purchased items if they follow Amazon's policies and instructions. Instead,
9 Amazon has unlawfully retained both the returned items and Plaintiffs' money. The facts alleged
10 in Plaintiffs' complaint establish that Amazon has engaged in a nationwide pattern of unlawful
11 conduct. Amazon has moved to dismiss a limited subset of Plaintiffs' claims on narrow and
12 technical grounds. Dkt. 62.

13 Although this case does not involve complex legal issues, it does involve complex factual
14 issues that will necessitate voluminous data and document production. Plaintiffs therefore believe
15 that Amazon's requests to limit discovery, and its pattern of delaying litigation, will be the greatest
16 impediment to a prompt resolution of the parties' dispute. Accordingly, Plaintiffs respectfully ask
17 that the Court hold both parties to strict and comprehensive deadlines set forth below.

18 Amazon has an established pattern and practice of unnecessarily delaying progress in this
19 and other litigation warranting this Court's oversight. The original Plaintiffs filed their complaint
20 on September 5, 2023, Dkt. 1, and stipulated to extend Amazon's deadline to answer the complaint
21 by 40 days. Dkt. 15. This Court then set a deadline for the parties to hold a Fed. R. Civ. P. 26(f)
22 conference on November 1, 2023, and the parties held that 26(f) conference on October 31, 2023.
23 Afterward, on November 8, 2023, Amazon filed a nine-page motion to dismiss seeking dismissal
24 of Plaintiffs' quasi-contract and conversion claims. Dkt. 31. This Court then consolidated two
25 cases involving similar allegations of wrongful conduct by Amazon into Plaintiffs' case; struck
26 the deadlines regarding initial disclosures, joint status report, and early settlement; struck
27 Amazon's motion to dismiss; and sought briefing on appointment of interim class counsel. Dkt.

1 32. After the undersigned counsel were appointed interim class counsel, Plaintiffs filed a
2 consolidated class action complaint. Dkts. 56, 58.

3 Since that time, Amazon has delayed all discovery progress. Plaintiffs served their first
4 set of requests for production to Amazon on April 23, 2024, but Amazon objected to the discovery,
5 contending that it was premature because the October 31, 2023 Rule 26(f) conference was null
6 and void. The Parties met and conferred on May 2, 2024 on Amazon's objection, during which
7 the Parties resolved to settle the dispute by agreeing to a reasonable extension for Amazon to
8 respond to the April 23 requests for production. After several weeks and further prompting by
9 Plaintiffs, however, Amazon responded with a blanket objection to Plaintiffs' requests for
10 production, again contending that the previous 26(f) conference between the Parties on October
11 31, 2023 was null and void. The Parties met and conferred once again to resolve the same dispute
12 on June 5, 2024. Amazon's objection that the 26(f) conference held by the parties on October 31,
13 2023 occurred in different litigation, and its unwillingness to abide by agreements intended to
14 work around that objection, has unnecessarily delayed the start of discovery in this matter.
15 Moreover, in that conference, Amazon made it clear that it will resist the production of
16 transactional data, and data necessary to the calculation of class-wide damages on the basis of
17 burden and relevance. Amazon also stated it will seek to postpone even its collection of such data
18 until after the court certifies a class in this case, necessarily delaying its production well into the
19 future.

20 Amazon's injection of unnecessary delay has also been apparent in its motions to dismiss
21 briefing. Plaintiffs agreed to extend Amazon's deadline to respond to the original complaint by 40
22 days for Amazon to file a nine-page partial motion to dismiss. After Plaintiffs filed their
23 consolidated complaint, Amazon again sought a 30-day extension to respond to the consolidated
24 complaint, to which Plaintiffs consented. Dkt. 59. But after taking 60 days to file the second
25 motion to dismiss, Amazon filed a nine-page motion that was materially identical to their original
26 motion to dismiss. *Compare* Dkt. 31, *with* Dkt. 62. While Plaintiffs filed their opposition within
27 the default time under the local rules, Dkt. 65, Amazon requested a one-week extension to file its
28 reply brief. Dkt. 66. Although Plaintiffs have stipulated to these extensions out of professional

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1 courtesy, they feel these extensions have been unwarranted and have served only to unnecessarily
2 delay an efficient resolution of this matter. Amazon's unnecessary extension requests further
3 support holding the Parties to a rigid schedule.

4 Amazon has a history of delaying discovery in this district. Indeed, recently the Federal
5 Trade Commission and 19 states and territories filed a joint status report accusing Amazon of
6 slow-walking discovery. *See Federal Trade Commission, et al., v. Amazon.com, Inc.*, Case No.
7 2:23-cv-01495-JHC (W.D. Wash. June 3, 2024), Dkt. 246 at 3–5. There, Amazon produced just
8 2,580 documents compared to the FTC's production of over 300,000 documents. *Id.*

9 In short, Plaintiffs are concerned that Amazon's preferred pace may necessitate Plaintiffs
10 seeking relief from the Court on several occasions. In an effort to avoid unnecessary delay and
11 wasted resources, Plaintiffs respectfully request that the Court hold both Parties to the rigid
12 schedule set outlined by Plaintiffs below.

13 **b. Amazon's statement:**

14 Amazon offers online retail services. Dkt. 58. Amazon seeks to make buying online as
15 easy as possible, including by offering “free, convenient returns on most items delivered in the
16 U.S.” *Id.* ¶ 20. Amazon offers an innovative and convenient feature that allows customers to
17 receive advance refunds for product returns before Amazon receives the products.

18 Plaintiffs are customers who took advantage of Amazon's return policies. Plaintiffs bring
19 this putative class action based on Amazon's purported breach of its returns policies. Plaintiffs'
20 claims appear to arise from individualized factual allegations regarding their personal refund
21 experiences. Plaintiffs will not be able to maintain a class action, or sustain individual claims, in
22 this case.

23 On November 13, 2023, the Court granted Amazon's motion to consolidate. Dkt. 32.
24 After nearly four and a half months, Plaintiffs filed their Consolidated Class Action Complaint.
25 Dkt. 58, which added five new plaintiffs, redefined the class and added a new class, introduced
26 two new causes of action, and revised the allegations to include new allegations while dropping
27 some earlier ones in response to Amazon's first motion to dismiss. Per the parties' agreement,
28 Amazon filed its partial motion to dismiss the Consolidated Complaint on May 15, 2024. Dkt. 62.

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1 Unfortunately, Plaintiffs' "Statement of the Case" reflects unproductive attacks on
2 Amazon generally and an intent to litigate discovery issues, rather than a focus on the merits of
3 the case and cooperation. Amazon has been cooperating with Plaintiffs since the onset of this
4 litigation and continues to do so. And as reflected in Amazon's reasonable proposed schedule
5 below, Amazon has no intent to unreasonably delay the progress of this case. Consistent with the
6 Court's consolidation order, which struck the parties' initial disclosures and joint status report
7 deadlines, Amazon proactively reached out to Plaintiffs' counsel on April 29, 2024, to schedule a
8 Rule 26(f) conference for the consolidated matter. On May 2, 2024, the parties met and conferred
9 on various issues to start moving the case along. The parties agreed to conduct the Rule 26(f)
10 conference on June 5, 2024. In advance of that conference, Amazon sent Plaintiffs a proposed
11 draft of the protective order with redlines reflecting Amazon's edits against the Court's model
12 protective order. Just two days after the Rule 26(f) conference, Amazon sent Plaintiffs a proposed
13 draft of the ESI protocol with a redline reflecting Amazon's changes against the model ESI
14 protocol. The parties are actively discussing drafts of both documents and hope to reach
15 agreement on the open issues.

16 **2. Consent to a magistrate**

17 No.

18 **3. Joinder of additional parties**

19 The Parties propose that additional parties should be allowed with leave of Court for good
20 cause.

21 **4. Proposed deadline for class certification briefing**

22 *See Section 5.*

1 **5. Discovery Plan**

2 **a. Plaintiffs' Proposed Schedule:**

3 Event	4 Plaintiffs' 5 Proposed 6 Deadline
7 Initial Disclosures	8 June 20, 2024
9 ESI Data Source, Custodians, Non-Custodial Data 10 Sources, Third-party Data Sources, Inaccessible Data, 11 and Proposed Search Term Disclosures	12 July 26, 2024
13 Exchange of Search Terms and Custodians counter- 14 proposals	15 Aug 5, 2024
16 Exchange of hit counts	17 Aug 12, 2024
18 Production of Documents to begin	19 Aug 14, 2024
20 Parties to Reach Agreement to Custodians and Search 21 Terms, or Seek Court Intervention	22 Aug 26, 23 2024
24 Completion of Production of Documents retrievable 25 without the use of search terms	26 Sept 11, 2024
27 Report to the Court on the Status of Discovery	28 Dec 2, 2024
29 Substantial Completion of Document Production	30 Feb 10, 2024
31 Deadline for filing any motion to compel discovery 32 related to Class Certification.	33 June 2, 2025
34 Deadline for Motion for Class Certification, and 35 disclosure of any expert report(s) supporting class 36 certification	37 July 7, 2025
38 Deadline for Depositions of Plaintiffs' experts	39 July 28, 2025
40 Deadline for Opposition to Class Certification, and 41 disclosure of any expert report(s) opposing class 42 certification	43 Aug 4, 2025
44 Daubert motion(s) directed to Plaintiffs' experts' class 45 certification report(s)	46
47 Deadline for Depositions of Amazon's Experts	48 Aug 25, 2025

Event	Plaintiffs' Proposed Deadline
Deadline for Reply in Support of Class Certification, and disclosure of any rebuttal expert report(s)	
Daubert motion(s) directed to Defendants' expert's class certification report(s)	Sept 2, 2025
Opposition to any Daubert motion(s) directed to Plaintiffs' expert's class certification reports	
Deadline for Depositions of Plaintiffs' Rebuttal experts	Sept 9, 2025
Reply to any Daubert motion directed to Plaintiffs' expert's class certification reports	Sept 16, 2025
Opposition to any Daubert motion directed to Amazon's expert's class certification reports	Sept 23, 2025
Reply to any Daubert motion directed to Amazon's expert's class certification reports	Oct 14, 2025
Class Certification Hearing	TBD
Close of Discovery	TBD, but no sooner than 4 months after the Court's ruling on Class Certification

b. Amazon's Proposed Schedule:

Plaintiffs' proposed schedule is unnecessarily detailed and prescriptive. Amazon proposes certain dates relating to discovery, dispositive motions, and class certification. The Parties can confer in good faith regarding additional deadlines if and as needed.

Event	Amazon's Proposal

Deadline for Disclosures of Custodians, Non-Custodial Data Sources, Third-party Data Sources, and Inaccessible Data	July 26, 2024
End of Fact Discovery*	February 28, 2025
Expert Opening Reports	March 13, 2025
Rebuttal Reports	April 17, 2025
Close of Expert Discovery	May 30, 2025
Deadline for class certification, MSJ, and Daubert motions	August 29, 2025
Opposition to class certification, MSJ, and Daubert motions	Six weeks after motion is filed
Replies to class certification, MSJ, and Daubert motions	Four weeks after opposition is filed

c. Subjects of discovery

i. Plaintiffs:

Plaintiffs anticipate conducting discovery seeking documents and data:

- Identifying return policies over time;
- Identifying Amazon customers who were recharged for items that Amazon received;
- Identifying the value of items recharged and not refunded;
- Transactional data for returns that were received by Amazon for which the customer was recharged or not refunded;
- Concerning transactional data for returns received;

- 1 • Concerning data points captured in Amazon's return process;
- 2 • Concerning logical diagrams of Amazon's computerized refund process;
- 3 • Identifying Amazon's process for accepting returns at Amazon facilities;
- 4 • Concerning package tracking at Amazon Fulfillment Centers;
- 5 • Concerning data retention of Return Center tracking information;
- 6 • Concerning package tracking from Designated Location to Fulfillment Center;
- 7 • Concerning training materials for Amazon Return Center associates;
- 8 • Concerning training materials for Designated Drop-off location workers;
- 9 • Concerning errors recording return receipts;
- 10 • Concerning internal audits or reviews of return processes;
- 11 • Identifying return costs;
- 12 • Identifying administrative burdens concerning returns;
- 13 • Concerning return administrative changes or change requests;
- 14 • Concerning the frequency or amount of customer complaints concerning already returned items;
- 15 • Analysis of costs to correct issues;
- 16 • Identifying percentage of returns that result in recharge for non-receipt;
- 17 • Identifying percentage of returns that result in recharge for fraud;
- 18 • Identifying percentage of returns with reduced refund due to product's condition;
- 19 • Identifying changes in return policies over time;
- 20 • Identifying changes in return handling practices over time;
- 21 • Identifying return non-receipt messaging sent out to customers over time;
- 22 • Identifying return wrong item messaging sent out to customers over time;
- 23 • Identifying return poor condition messaging sent out to customers over time;
- 24 • Identifying policies/guidance concerning evaluating condition of return items;
- 25 • Identifying records concerning identification of items received;
- 26 • Identifying records concerning returns lost in transit;
- 27
- 28

1 • Concerning instructions to Amazon Customer Representatives for dealing with
2 complaints concerning already returned items;
3 • Concerning programming of chatbots for dealing with complaints concerning
4 already returned items;
5 • Concerning refunds when a customer complains about already returned items;
6 • Concerning providing return center tracking for only 60 days;
7 • Concerning change in messaging around returns, return receipt, and recharges over
8 time; and
9 • Concerning differences in return handling practices by state or region.

10 ii. **Amazon:**

11 Amazon anticipates conducting discovery seeking documents and data concerning:

12 • The identities of the named-plaintiffs and Customers 1 and 2;
13 • Items named-plaintiffs requested to return;
14 • Items named-plaintiffs claim to have returned but for which they did not receive a
15 refund;
16 • Items named-plaintiffs claim to have returned and for which they did receive a
17 refund;
18 • Named-plaintiffs process for request returns;
19 • Named-plaintiffs process for dropping off returns;
20 • Customers' communications with Amazon;
21 • Specific allegations in the complaint;
22 • Any injury, harm, or damages suffered by customers and mitigation efforts;
23 • Communications between named-plaintiffs and Amazon regarding returns;
24 • Any agreements between named-plaintiffs and Amazon;
25 • Any agreements Amazon purportedly breached;
26 • The items named-plaintiffs requested to return, what they actually returned, and
27 the condition of those items;

1 • Refunds received;
2 • Refunds denied; and
3 • These same categories of data from class members if a class is certified.

4 **d. Electronically stored information**

5 The Parties agree to certain minor changes to the Western District of Washington's Model
6 Agreement Regarding Discovery of Electronically Stored Information and Proposed Order.

7 **e. Proposed limitations on discovery**

8 The Parties anticipate entering a stipulation to address expert discovery.

9 **f. Need for any discovery-related orders**

10 The Parties intend to meet and confer to limit court intervention and discovery-related
11 orders where possible. Plaintiffs believe that regular status conferences with the Court will assist
12 in maintaining an efficient schedule. Amazon does not believe regular status conferences with the
13 Court are necessary, and it remains confident that the parties can come to resolutions with limited
14 Court intervention. But Amazon of course defers to the Court regarding whether regular status
15 conferences are helpful.

16 The Parties disagree about the changes necessary to the Western District of Washington's
17 Model Stipulated Protective Order.

18 **i. Plaintiffs:**

19 **Disclosure of Consulting Witnesses:** Amazon adds four paragraphs to the District's
20 Model Order that (1) give Amazon the ability to prevent Plaintiffs from providing confidential
21 materials to a hired expert if Amazon objects and accordingly (2) requires Plaintiffs to disclose
22 any retained expert's identity (consulting or testifying, and on *any* topic) before providing them
23 any materials designated as confidential. The proposed Order prevents Plaintiffs from providing
24 confidential materials to their experts until they can secure an Order from the Court. This provision
25 is contrary to the provisions of Fed. R. Civ. P. 26(a)(2)(D) and (b)(4)(D) and unnecessarily restricts
26 Plaintiffs' access to evidence and freedom from disclosure of work-product.

27 Amazon is incorrect that such provisions are "routinely" approved in this District, or that
28 it is necessary here. As support, Amazon cites to cases where competitors *stipulated* to the

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1 restrictive protective orders because the litigation involved alleged misappropriation of trade
2 secrets and patent infringement relating to propriety software and hardware. *See Philips N. Am.*
3 *LLC v. Summit Imaging Inc.*, No. 2:19-CV-01745-JLR, (W.D. Wash.), Dkts. 1, 40; *NXP USA, Inc.*
4 *v. Impinj, Inc.*, No. 2:20-cv-01503-JHC, (W.D. Wash.), Dkts. 1, 77; *see also Impinj, Inc. v. NXP*
5 *USA, Inc.*, Case No. 4:19-cv-03161-YGR (N.D. Cal.), Dkts. 1, 52. Amazon also misplaces reliance
6 on *Frame-Wilson v. Amazon.com, Inc.*, No. 2:20-cv-00424-JHC (W.D. Wash.). That large
7 antitrust consumer class action is one of several related cases, including related cases brought by
8 the FTC and numerous state Attorneys General, that challenge Amazon’s anticompetitive conduct
9 impacting hundreds of millions of consumers making purchases on and off of Amazon. *See FTC*
10 *et al. v. Amazon.com, Inc.*, No. 2:23-cv-01495-JHC (W.D. Wash. Mar. 14, 2024), Dkt. 171. In
11 *Frame-Wilson*, Judge Jones approved such a protective order provision limited only to *industry*
12 experts—not all experts, as Amazon proposes here. No. 2:20-cv-00424-JHC (W.D. Wash.), Dkt.
13 90 at 7. And even then, Judge Jones further qualified that nothing in that order “modifie[d] the
14 ordinary deadlines for expert disclosures under the Federal Rules.” *Id.* at 8.

15 In any event, this is not a case that should require such proscriptions on Plaintiffs' ability
16 to share information with their experts, and ordinary protective order restrictions on the use of
17 information disclosed in the case will be sufficient.

ii. Amazon:

19 **Disclosure of Consulting Witnesses:** Amazon’s proposed language to the protective
20 order, requiring Plaintiffs to identify experts to whom Plaintiffs intend to disclose Amazon’s
21 Attorney’s-Eyes-Only (AEO) Material, is necessary to protect Amazon’s sensitive business
22 information. Amazon must know who will have access to its most sensitive information, including
23 experts. This risk is not hypothetical; Amazon is currently litigating this issue in another matter
24 in this District where the plaintiffs’ expert intentionally did not disclose his prior work adverse to
25 Amazon. Because of the breadth of Amazon’s business and its many competitors across many
26 industries, disclosing Amazon’s sensitive information to experts can expose Amazon to
27 competitive risk in other cases and matters. Amazon is entitled to evaluate that risk and to raise
28 it, if appropriate, with the Court. Amazon’s proposed process is simple and streamlined, it mirrors

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1 the process from the Northern District of California’s Model Protective Order, and it is routinely
2 approved by courts in this District. *Philips N. Am. LLC v. Summit Imaging Inc.*, No. 2:19-CV-
3 01745-JLR, 2020 WL 2085153 (W.D. Wash. Apr. 30, 2020) (entering protective order with
4 procedural provision allowing parties to object to disclosure of highly confidential information to
5 experts); *NXP USA, Inc. v. Impinj, Inc.*, No. 2:20-cv-01503-JHC, Dkt. No. 77 (W.D. Wash. Jan.
6 4, 2021 (same); *see also Frame-Wilson v. Amazon.com, Inc.*, No. 2:20-cv-00424-RAJ, 2023 WL
7 1433655 (W.D. Wash. Feb. 1, 2023).

8 Plaintiffs’ purported concerns are over-blown. Amazon’s proposed process is in no way
9 inconsistent with the Federal Rules; as noted, it is part of some courts’ model protective orders,
10 and it is routinely adopted and approved in this District. Amazon’s proposed process applies only
11 to AEO material. It only requires Plaintiffs to identify their expert and his/her experience so that
12 Amazon can evaluate any potential conflicts or risks. It does not require Plaintiffs to identify how
13 they intend to use the expert, let alone any details about the expert’s work or possible opinions or
14 testimony related to this matter. It is highly unlikely that Plaintiffs’ identification of an expert
15 with particular expertise (e.g., finance, accounting, marketing, consumer behavior) will be
16 revelatory or expose Plaintiffs’ strategy or intentions in any material way. That minimal risk to
17 Plaintiffs is far outweighed by the risk to Amazon if its most sensitive information is shared with
18 someone who is or is likely to be in a position to misuse or divulge such information (even
19 inadvertently) in other contexts.

20 **6. Items set forth in Local Civil Rule 26(f)(1)**

21 **a. Prompt case resolution**

22 The Parties do not propose any ideas for prompt case resolution at this stage.

23 **b. Alternative dispute resolution**

24 The Parties agree that alternative dispute resolution is premature at this time, but will
25 continue to consider the possibility of ADR and provide an update to the Court.

26 **c. Related cases**

27 On September 5, 2023, Plaintiffs filed their class action complaint against Amazon
28 alleging Amazon violated its refund and exchange policy by charging them for purchases they had

1 returned. *Abbott, et al. v. Amazon.com, Inc.*, No. 23-cv-1372, Dkt. No 1 (Sept. 5, 2023).
2 Subsequently, two additional class actions were filed against Amazon over the same practice.
3 *Srivastava v. Amazon.com, Inc.*, No. 23-cv-1545, Dkt. No. 1 (Oct. 5, 2023); *Jones Clark v.*
4 *Amazon.com Inc.*, No. 23-cv-702, Dkt. No. 1 (Nov. 7, 2023). The Court consolidated these three
5 actions on November 13, 2023, and then granted the *Abbott* Plaintiffs' motion for appointment of
6 interim co-lead counsel. Dkts. 32, 56. The Parties have not identified any other related cases.

7 **d. Discovery management**

8 Plaintiffs propose the appointment of a magistrate judge to handle discovery matters.

9 Amazon proposes that the Article III judge handle discovery matters.

10 **e. Anticipated discovery sought**

11 The Parties' statements of anticipated discovery from each other are stated above. *See*
12 § 5(c) above. In addition, the Parties anticipate seeking discovery from third parties concerning
13 the same subject matters.

14 **f. Phasing motions**

15 The Parties' proposed schedule described in Sections 4 and 5 above represents an
16 efficient phasing of motions.

17 **g. Preservation of discoverable information**

18 **i. Plaintiffs:**

19 Plaintiffs request preservation of all data and documents responsive to their anticipated
20 discovery, as described in Section 5(c)(i) above. Plaintiffs have preserved relevant documents
21 consistent with the claims and defenses in this case.

22 **ii. Amazon:**

23 Amazon will fully comply with its preservation obligations.

24 **h. Privilege issues**

25 *See* Section 5 above.

26 **i. Model Protocol for Discovery of ESI**

27 *See* Section 5(d) above.

28 **j. Alternatives to the Model Protocol.**

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1 See Section 5(d) above.

2 **7. Discovery deadline**

3 See Sections 4 and 5 above.

4 **8. Bifurcation**

5 The Parties disagree as to the merit of bifurcating class certification discovery and merits
6 discovery.

7 **a. Plaintiffs:**

8 Plaintiffs do not agree with the bifurcation of merits and class discovery. Bifurcation will
9 give rise to unnecessary disputes and will delay, rather than advance, a determination of class
10 certification. Amazon wishes to draw a line between categories of documents, it believes, are only
11 relevant in the context of a certified class and documents that are relevant to the merits of this
12 case, producing only the latter at this stage. And yet Amazon will not specifically define the
13 categories of documents that fall into each grouping. Bifurcation will undoubtedly raise additional
14 disputes over what is merit discovery and what is class discovery. In fact, in denying bifurcation
15 of discovery, this district has agreed with other courts that “[s]eparating merits and class discovery
16 ‘raise[s] a slew of issues as to what discovery relates to the class, as opposed to the named
17 plaintiffs, thereby causing additional litigation regarding the distinction between the two.’”

18 *Hunichen v. Atonomi LLC*, 2020 WL 5759782, at *2 (W.D. Wash. Sept. 28, 2020) (citing *Ahmed*
19 *v. HSBC Bank USA, Nat'l Ass'n*, 2018 WL 501413, at *3 (C.D. Cal. Jan. 5, 2018)). Indeed,
20 “bifurcation may force the court to resolve endless discovery disputes” “because the distinction
21 between class certification and merits discovery is murky at best and impossible to determine at
22 worst.” *Ahmed*, 2018 WL 501413, at *3 (internal quotations omitted).

23 Bifurcation is also problematic because “[f]acts that are relevant to the class determination
24 frequently will overlap with those relevant to the merits of the case.” *Gusman v. Comcast Corp.*,
25 298 F.R.D. 592, 595 (S.D. Cal. 2014). The Supreme Court’s landmark decision in *Wal-Mart*
26 *Stores, Inc. v. Dukes*, 564 U.S. 338 (2011), indicated that class certification “is proper only if the
27 trial court is satisfied, after a rigorous analysis, that the prerequisites of Rule 23(a) have been
28 satisfied,” and this analysis will frequently “entail some overlap with the merits of the plaintiff’s

1 underlying claim. That cannot be helped.” *Dukes*, 564 U.S. at 350–51. In light of *Dukes*, “many
2 courts are reluctant to bifurcate class-related discovery from discovery on the merits.” *Ahmed*,
3 2018 WL 501413, at *3.

4 Moreover, Amazon’s argument—that several of Plaintiffs’ discovery requests will only
5 become relevant once the class is certified—ignores the necessity of the requested information for
6 Plaintiffs to present their bid for class certification. *Hunichen*, 2020 WL 5759782, at *2
7 (“bifurcation of discovery poses significant prejudice to plaintiff, who must meet a high burden to
8 show certification of the class is proper”) (internal quotations omitted). For example, the
9 transaction records concerning those returns for which refunds were not issued is relevant to
10 whether liability or damages can be proven on a class-wide basis without giving rise to significant
11 individualized inquiries as required by Rule 23. And, the identity of individuals for whom these
12 refunds are not issued is necessary both for Plaintiffs to identify potential witnesses in this case
13 and so that notice can be issued. Amazon asserts it should not have to produce this type of
14 information because it would be “incredibly burdensome (if it is possible at all) for Amazon to
15 collect and produce data for millions of potential class members,” but this rings hollow. First,
16 Amazon has produced data relating to transactions for millions of proposed class members in other
17 consumer class actions filed against it; there is no apparent reason it would be impossible to do so
18 here. *De Coster et al. v. Amazon.com, Inc.*, No. 2:21-cv-00693-RSM (W.D. Wash. Apr. 6, 2023),
19 Dkts. 73, 90. Second, if it is indeed “incredibly burdensome” for Amazon to produce such data, it
20 is likely to be most efficient for it to be collected alongside other customer transaction-related data
21 that Amazon will need to produce in this matter, rather than to undertake separate independent
22 data collection and production efforts potentially years apart. Furthermore, information regarding
23 the aggregate number of returns for which Amazon failed to issue a refund is vital to have any
24 informed settlement discussion or to meaningfully participate in an ADR process. Bifurcation will
25 therefore only give rise to further discovery disputes, expenses, and delay.

26 Amazon’s proposal that it should instead produce only a “natural ‘sampling’” of data
27 limited to the nine named plaintiffs’ accounts alone—not even a statistically valid representative
28 “sampling”—is plainly insufficient in this nationwide class action.

b. Amazon's statement:

2 Amazon has never proposed bifurcating merits discovery and class discovery. Amazon
3 merely proposed that, unless and until a class is certified, Amazon should not be required to
4 identify, collect, and produce documents or data that could be relevant only in the context of a
5 certified class. As just one example, in Plaintiffs' Request for Production No. 8, Plaintiffs seek
6 “[d]ocuments sufficient to **Identify** the **Customers** who during the **Relevant Period** were
7 (1) **Denied a Refund** or Recharged on the basis that You did not receive the **Returned Item** but
8 (2) the **Returned Item** was delivered to **Your Designated Carrier**.” The *identities* of every class
9 member can conceivably be relevant (or, for that matter, knowable) only once a class has been
10 certified. It will also be incredibly burdensome (if it is possible at all) for Amazon to collect and
11 produce data for millions of potential class members. There is no reasonable justification for
12 putting Amazon to that burden and expense if a decision by the Court denying class certification
13 would obviate the effort.

14 Plaintiffs' argument about potential delay in providing class-wide notice is not credible.
15 Even if a class is certified, it will be many months, under any scenario, before there is any basis
16 or need to send notice to the class. Amazon should not be required to collect and produce class-
17 wide data unless and until such a class exists.

18 As Amazon explained to Plaintiffs' counsel in the meet-and-confer process, Amazon will
19 of course produce discovery related to the merits of Plaintiffs' claims and sufficient for Plaintiffs
20 to file and support their class-certification motion. That will include data related to the named
21 Plaintiffs' Amazon accounts, which will provide a natural "sampling" of the types of account data
22 that exist and that could, theoretically, be collected on a class-wide basis. That sampling is all
23 Plaintiffs need for class-certification purposes, not the same types of data for every potential class
24 member.

25 It would be difficult or impossible at this stage to define and agree on every category of
26 data that is relevant only in the context of a certified class. As such, Amazon asks the Court merely
27 to approve that concept, understanding that the parties may disagree on what falls into the pre-

1 certification versus post-certification bucket. But like all discovery disputes, the parties will work
2 in good faith to resolve those issues and seek the Court's intervention only as a last resort.

3 **9. Whether the pretrial statements and pretrial order called for by LCR 16(e),**
4 **(h), (i), and (k), and 16.1 should be dispensed with in whole or in part for the**
5 **sake of economy**

6 The Parties agree that dispensing with pretrial statements and a pretrial order is not
7 appropriate for this action.

8 **10. Individualized Trial Program**

9 The Parties agree that the Individualized Trial Program is not appropriate for this action.

10 **11. Other suggestions for shortening or simplifying the case**

11 The Parties agree to meet and confer as appropriate to propose any issues that can be
12 narrowed by stipulation or by motion, as well as any potential means to expedite the presentation
13 of evidence at trial.

14 **12. The date the case will be ready for trial**

15 Plaintiffs anticipate that their case will be ready for trial 8 months after the Court's
16 order on class certification.

17 Amazon believes that setting a trial date is premature at this juncture.

18 **13. Trial type**

19 Plaintiffs have requested a trial by jury.

20 **14. Trial length**

21 Plaintiffs currently anticipate they will require 5-7 days for the presentation of their case.

22 Amazon believes that it is premature to identify the number of trial days, but Amazon
23 will require at least as much time as is allotted to Plaintiffs to present their case.

24 **15. Names, addresses, and telephone numbers of all trial counsel**

25 **a. Counsel for Plaintiffs:**

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16. Scheduling complications to be considered in setting a trial date

The Parties are not currently aware of scheduling conflicts in setting a trial date.

17. Deadline to serve parties who have not been served

All parties have been served.

18. Pretrial Fed. R. Civ. P. 16 conference

The Parties do not believe that a pretrial conference is necessary under Rule 16 of the
Federal Rules of Civil Procedure.

19. Deadline for corporate disclosure statement

All corporate parties have submitted corporate disclosure statements.

Dated: July 16, 2024

Respectfully submitted,

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18 *Attorneys for Defendant Amazon.com, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that, on July 16, 2024, I caused a true and correct copy of the foregoing to be filed in this Court's CM/ECF system, which sent notification of such filing to counsel of record.

By: /s/ Alicia Cobb
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